

July 16, 1998

P.S. Protest No. 98-07

KATHERINE LATTIG

Solicitation 980-12-98

DIGEST

Protest against termination of nonresponsibility is denied. Contractor's record of unsatisfactory performance in the course of previous contract which was terminated for Postal Service's convenience warrants contracting officer's inquiry into bidder's plan to improve situation, and his conclusion that that plan was not satisfactory was neither arbitrary nor capricious.

DECISION

Ms. Katherine Lattig protests the contracting officer's determination that she is a nonresponsible bidder in response to a solicitation for the delivery of mail in Yacolt, WA.¹

The Seattle Branch, Western Area Distribution Office issued Solicitation 980-12-98 October 29, 1997, soliciting bids for delivery to 522 mail boxes on a route out of Yacolt, WA. Ms. Lattig submitted the only bid in response to the solicitation. Following a review of Ms. Lattig's responses to concerns raised about her previous

¹ Yacolt is a small town (1990 population: 600) in south-western Washington state, about thirty miles north-northeast of Portland, OR. The Yacolt post office reports administratively to the Portland District. The office has no city mail delivery; it has two rural letter carriers and this box delivery highway route.

contract performance in Yacolt, she was found nonresponsible to perform the contract, and her bid was rejected.

The following summary is taken from the contracting officer's report. In July, 1988, Ms. Lattig was awarded Highway Contract Route (H CR) 98669 for service out of Yacolt for an initial term ending in June, 1992.

In August, 1988, various problems arose between Ms. Lattig and the Yacolt office, which required a field visit and a route survey in December, 1988 to resolve. In June, 1990, a member of the Seattle Branch office again went to Yacolt at the request of the Portland District "to resolve conflicts between the contractor and Postal employees." In December, 1991, the Seattle Branch became aware that Ms. Lattig had been communicating with the Larch Mountain Honor Camp, a delivery point on the route, without the approval or concurrence of the Yacolt postmaster, the administrative official for the contract, contrary to her direction to Ms. Lattig.²

In the spring of 1992, despite the Portland District's request that the contract not be renewed, the contracting officer renewed Ms. Lattig's contract for a four year term. According to the contracting officer, his office took the view "that while the contractor may not [have been] a model contractor, the [postmaster] was not a very good manager and had allowed the poor work environment . . . to fester." About that time, that postmaster and a clerk with whom Ms. Lattig was having conflicts left the Yacolt office.³ Ms. Lattig's contract was again renewed in 1996 for a term to end in June, 2000.

In 1997, the postmaster received complaints from some of the customers on Ms. Lattig's route "about the contractor returning their mail for simple misspelled address or names, defacing mail with comments and other delivery irregularities."⁴

² The unsatisfactory condition of the road to the camp was one long-standing problem. In 1997, the contract was modified to eliminate mail delivery to the Honor Camp.

³ The record is somewhat unclear concerning the identities and dates of service of the several postmasters and temporary replacements for postmasters (officers in charge) during the term of Ms. Lattig's service. It appears, however, that the current postmaster's term of duty began in 1995.

⁴ A July, 1997, memorandum from the Yacolt postmaster to the Seattle Branch summarized her view of the problems:

[Ms. Lattig] has a history of causing problems in this office with past Postmasters and employees. She has been instrumental in creating a hostile work environment in the past. . . .

* * *

(Footnote continued on next page.)

The postmaster documented specific complaints in a series of forms 5500, an official form used to document highway contract irregularities, and the contracting officer issued a cure letter to the contractor on August 27, 1997. Complaints continued thereafter, and the Portland District "stated they wanted the contractor out of the office." In November, 1997, the contracting officer terminated Ms. Lattig's contract for convenience, paying her the \$10,979 indemnity as the contract provided for such a termination. Ms. Lattig requested that the next higher level of contracting authority review the termination, and that authority concurred in the action in December, 1997.

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Due to severe customer complaints over the past few weeks, I have started checking every piece of mail that [Ms. Lattig] has in her UAA (undeliverable as addressed) to be returned to sender and I have found several periodicals/subscriptions magazines that were deliverable. I instructed her to deliver them as addressed. She did not like being checked on nor being told to deliver the mail as addressed, and argued about delivering it. I believe she feels I am undermining her authority to do as she pleases with other people's mail if it is not absolutely perfect. This is documented in the complaint list.

I also have a petition that was signed by 20 customers about returned mail problems, some that are legitimate and some are not. 911 (Clark County) implemented an extensive address change 5 years ago that was never implemented within the Yacolt delivery area. Consequently, there was 8-10 feet of incorrectly addressed mail daily with the old addresses instead of the correct street names, i.e., County Rd. 16 was changed to Amboy Rd, etc. . . . I worked with the carriers to implement the change and correct the old addresses. This was done for 1 year, then the mail returned to sender as undeliverable, the old street names withdrawn from the scheme and CRIS [Carrier Route Information System]. So some of the complaints are from this implementation. However, [Ms. Lattig] took it upon herself to return every piece of mail that was not perfect. It has created many problems and customer complaints.

I bring to your attention . . . the statements made [in the petition] concerning the community's fear of [Ms. Lattig] and the fact that six people signed "Afraid to sign my name." I have had two conversations with customers that have resulted in a complaint and statements of fear of retaliation from [Ms. Lattig]. This is totally unacceptable. I could deal with the community on the issue of street name changes . . . I cannot deal with extremely irate customers screaming at me because [Ms. Lattig] has returned mail simply because it was abbreviated or misspelled.

Among the examples of mail which Ms. Lattig proposed to return were instances of misspelled surnames (H aus from vice H allstrom; Dic Rerm an vice Dickerman, Ruch ins vice Rushing), and misspelled or abbreviated street names (W orth ingt n vice Worthington; Sunse t Falas Rd. or Sunse t Fls Rd. vice Sunse t Falls Rd.).

Following the termination for convenience, deliveries were provided under an emergency contract. Solicitation 980-12-98 was to replace that emergency service.

In the course of the consideration of Ms. Lattig's bid, she was asked to provide a management plan responding to the concerns which had arisen out of the problems in the course of the previous contract.⁵

Unsatisfied with her management plan,⁶ the contracting officer responded with an explanation of that dissatisfaction,⁷ and requested a revised management plan.

⁵ Specifically, she was asked to explain how she would:

- prevent misdeliveries of the sort which had previously occurred;
- improve her working relationship with the administrative official;
- prevent disruptions to the Yacolt post office caused by her "hostile attitude"; and,
- ensure correct mail processing procedures were followed in accordance with the administrative official's instructions.

⁶ The bidder's response included the following:

I will continue to strive to be accurate in my work I should be as accountable as all the other carriers and should be treated the same as they are

I would . . . ask for third party intervention to identify any problems or situations that exist. I would notify the Contracting Officer[] if anything arises that appears to be a problem situation

I was unaware that [my] attitude . . . was felt to be hostile until it was too late to seek outside consultation. Again, I would seek . . . outside help on any situation involving any attitude problems that arise.

I would like specific instructions in writing on any mail handling procedures from the Administrative Official and/or the Contracting Officer so that no mis-interpretation can be made on how to handle the mail.

I would also like to be told if there is a problem before a [form] 5500 is issued so I can improve and/or face the issue head on.

⁷ The response noted, in part:

[T]he tone [of the first paragraph] infers that Postal management was being unfair and your actions played no part in your previous contract being terminated.

This office administers over 1,400 contracts. We are sure you can appreciate that [we cannot intervene in disputes with administrative officials] on an ongoing basis on any new contract award. It is not an acceptable solution for you to seek a third

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The bidder's revised management plan was very general,⁸ and the contracting officer found it unsatisfactory. Accordingly, Ms. Lattig was advised that the contracting officer could not make an affirmative determination concerning her responsibility. Specifically, she was advised that her revised management plan "has not persuaded this office that you could provide satisfactory service on the contract in view of the problems that you have had with previous Administrative Officials[] and the customer complaints regarding your past performance."

Ms. Lattig submitted a protest to the contracting officer and her counsel also submitted a protest which elaborated on her protest. Counsel's submission contends that the Yacolt administrative official had undertaken "to get rid of Ms. Lattig as a contractor" by citing her for "petty" irregularities, that in terminating Ms. Lattig for convenience, the contracting officer had recognized that those irregularities were not sufficient grounds to terminate Ms. Lattig for default, and that the contracting officer acted arbitrarily and capriciously in rejecting her management plan. The

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part[y] intermediary on a continuing basis for every interaction between the Administrative Official and the contractor.

[Y]ou were directed in our letter dated August 27, 1997, to change your behavior or face termination of your contract for default. Your behavior did not change and . . . your contract was terminated for convenience. Again, it is not the role of this office to have an on going function mediating personality conflicts between contractors and Administrative Officials.

The instructions you failed to follow [under your previous contract] were in writing. . . . [D]ue to the complexity of mail handling operations, a plan requiring the Administrative Official or the Contracting Officer to issue written instructions on . . . the delivery of mail on a day to day basis is unacceptable.

[W]hen a contract irregularity occurs . . . a Form 5500 [is to] be issued. This allows for the irregularity to be documented The issuance of a Form 500 should not be considered punitive in nature. They are an informational tool designed to identify, clarify, and if appropriate obtain corrective action. It is a Postal Service system-wide tool that we would not be willing to make an exception to on a case by case basis.

⁸ For example, her response to the inquiry about improving her working relationship with the administrative official stated as follows:

Continue to work in a professional manner to create a work environment that is pleasant and productive and to achieve an environment which is customer service oriented. Continue to listen, evaluate and reflect upon what is said and to address concerns as necessary.

protest faults the requirement that management plan address "subjective and nebulous" areas of concern.

The contracting officer's statement and its attachments document Ms. Lattig's prior dealings with the Yacolt post office and its customers. It summarizes that record as documenting Ms. Lattig's hostile attitude, failure to follow instructions of the administrative official and the contracting officer, and a "continuous problem of poor customer relations."

Counsel for the protester contends that Ms. Lattig "is an excellent contractor" who has "fallen out of favor with the [postmaster]." He cites interviews of numerous postal customers conducted on Ms. Lattig's behalf following the termination of her contract for convenience; her favorable contract evaluations in the time-frame 1992 —1996; and many expressions of appreciation from her customers, most in the form of notes on Christmas cards. He also cites interviews with two former employees in the Yacolt post office, one identified as the postmaster in 1993 and 1994, and the other a part-time clerk who left the post office in January, 1998.

Counsel reviews the forms 5500 issued in 1997 and some of the postmaster's communications with the Seattle Branch to demonstrate the proposition that she was issuing the forms as part of a concerted effort to remove Ms. Lattig from her contract. He contends that the forms 5500 related to mail misdelivery were unjustified, and faults the irregularities issued for Ms. Lattig's conduct in the post office as reflecting arbitrary punishments for violations of unstated or inconsistent rules.

With respect to the claims that Ms. Lattig presented a hostile attitude or demeanor, counsel complains of the postmaster's reliance on anonymous complaints, and a complete lack of basis for the complainant's asserted fears, and with respect to the matter of misaddressed mail, counsel contends that the customer complaints resulted from the postmaster's directions to Ms. Lattig concerning the handling of mail with old or incomplete addresses.

DISCUSSION

As counsel's protest reflects:

A responsibility determination is a business judgment which involves balancing the contracting officer's conception of the requirement[s] of the contract] with available information about the contractor's resources and record. We will recognize the necessity of allowing the contracting officer considerable discretion in making such a subjective evaluation. Accordingly, we will not disturb a contracting officer's determination that a

prospective contractor is nonresponsible, unless the decision is arbitrary, capricious, or not reasonably based on substantial information.

OSM Corporation, P.S. Protest Nos. 91-59; 91-61; 91-67, December 29, 1991.

"The protester's contention that the Postal Service waived its opportunity to find [her] nonresponsible by failing to terminate [her] earlier contract for default is incorrect. A record of recent unsatisfactory performance on a postal contract, even without a termination, can justify a finding of nonresponsibility." *A-1 Transmission*, P.S. Protest No. 93-14, October 29, 1993 (internal quotation omitted). *Accord, Thuro Metal Products, Inc.*, P.S. Protest No. 95-42, December 12, 1995.

Contrary to the protester's view, the irregularities for which she was cited are neither unduly subjective or irrational.⁹ Discussion of irregularity report will suffice. As the postmaster's memorandum cited above indicates, addresses for many Yacolt customers had been changed. When mailers who addressed mail to the old addresses and requested address correction service, the contractor was to provide the mailer with the new address. Ms. Lattig had been so instructed on July 28, 1997.¹⁰ On

⁹ Terminations for default of box delivery contracts for deficiencies similar to those here alleged have often been sustained upon appeal. *See, e.g., Peggy A. Thomborg*, PSBCA No. 2385, 1989 PSBCA LEXIS 20, July 7, 1989 (numerous complaints concerning misdelivery, forwarding, and non-receipt of mail); *Robert Earl Lanier*, 94-2 BCA ¶ 26,693 ("outspoken" and "somewhat abrasive" male contractor with "aggressive personality," who failed to forward mail, discussed mail box locations with customers, and harassed female postal employees); *Arthur Napier*, 94-2 BCA ¶ 26,695, January 28, 1994 (failure to deliver accountable mail as directed; "long history of discourteous treatment of postmasters and customers," failure to comply with repeated directions to stop leaving handwritten notes for customers); *Richard Lewis Danel*, 94-2 BCA ¶ 26,687 (misdelivery, deliverable mail returned to sender, *etc.*, "constitutes a separate justification for the termination. . . ."); *Arthur L. Johnson*, 97-1 BCA ¶ 28,773, February 3, 1997 (extensive misdelivery problems evidenced by customer complaint petition).

¹⁰ The postmaster's written transcription of those instructions included the following:

In May 1997 you were instructed not to return mail that had abbreviations, missing numerals, missing directionals, or misspelled names & streets.

* * *

Continued failure to deliver mail that is known, contains an abbreviation, missing directionals, misspelled street or name, or numerals missing that does not request an address service can result in termination of your contract. Mail that requests an address service will continue to require the correct address be written on the piece and put in the UAA holdout. Mail that is addressed to the old address scheme can be endorsed with the new correct address for an address correction card to be sent and put in the UAA holdout.

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August 11, Ms. Lattig was furnished a Form 5500 by the postmaster which included the following:

In monitoring [Ms. Lattig's] route, I discovered that she has not been correcting any addresses, as requested by the mailers. . . . [A]bout half the first class mail comes with the endorsement "address service or address correction requested." The two other routes have had written corrections of approximately 8-10 pieces of mail daily that comes to the old county address, or incorrect in some way that they are correcting. Depending on the endorsement the pieces are either returned . . . or a 3547 card is sent with the correction. [Ms. Lattig] has not corrected any addresses for weeks. All the mail is being delivered, whether it has a bad address or not. She has been told to correct addresses, as the mailer is paying for this requested service.

The protester complains that this irregularity penalized her for complying with the earlier instruction to deliver all the mail that she knew where to deliver. That objection is unsatisfactory because it overlooks the previous instruction's specific direction with respect to mail requiring address correction service while relying on a more general direction which clearly related, in the context of the instruction, to a different problem, her insistence on returning mail addressed in accordance with the current address scheme for minor deficiencies such as omissions or misspellings. Such a reading is neither persuasive nor appropriate.

It is clear from the record, including material submitted by the protester, that Ms. Lattig has a direct and forceful personality.¹¹ The file reflects that throughout the

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Periodicals will not be returned or put in UAA unless it is a forward expired and unknown on the route. Periodicals with the old scheme address will be brought to the Postmaster's attention for an address correction card to be sent, if appropriate.

* * *

If you know where it goes, deliver it.

If it is questionable as to the disposition of the mailpiece, ask [the Postmaster].

The customer complaints of returned mail for no valid reason will stop now.

¹¹ In the words of the interview with the former postal clerk on Ms. Lattig's behalf:

Ms. Lattig will, when on the telephone [in the Yacolt post office] with businesses with whom she trades, take issue and question those who she believes are cheating

(Footnote continued on next page.)

term of her contract and thereafter, Ms. Lattig aggressively defended her performance.¹² As a result, Ms. Lattig has been in conflict with many of her supervisors

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or over-charging her. . . . Ms. Lattig's ability to take a position in her own defense to an unknown observer could be characterized as confrontational.

. . . [W]hen [the postmaster] challenged Ms. Lattig regarding something she believed Ms. Lattig had done incorrectly, Ms. Lattig would, in a non-threatening manner, provide historic precedence or explanation for her actions. Ms. Lattig would, at times, provide an impassioned argument in support of her position. . . . [although] Ms. Lattig's behavior [was not] confrontational or threatening.

Elsewhere, the clerk is quoted as noting:

Ms. Lattig performs her job by-the-book. . . . [S]he typically obeys the letter of any given policy, which may have contributed to her termination.

The clerk also recited that "all the female postal employees expressed fear of Ms. Lattig" for reasons arising out of rumor.

¹² For example, two February, 1998, memoranda from the Yacolt postmaster recite evidence to that effect subsequent to the contract termination:

Since her termination, the employees [have expressed fear of retaliation from her. Customers have come in to warn me of statements she made Several customers have expressed fear of her. . . . Two weeks after her termination, she hired a man that went around to customers on the route, asking them to testify on her behalf in the lawsuit. He also contacted the present employees at the Yacolt post office to testify in her behalf. . . . These customers were calling . . . complaining of feeling intimidated that [Ms. Lattig] would retaliate against them if they did not do as her agent requested. The employees expressed the same fear to me

(Memorandum of February 5.)

The current drivers on H CR 98669 . . . have come in from the route several times complaining that [Ms.] Lattig is following them on the route, stopping behind them at boxes instead of going around. They feel very intimidated by her when she does this.

The boyfriend of Ms. Lattig . . . has also harassed [a Yacolt clerk] working at the Amboy Post Office.

* * *

The employees of the Yacolt Post Office are very scared of Katherine Lattig. Everyone here feels she is controlling, manipulative, intimidating, and psychotic enough to do harm when these appeals are over and she loses.

(Memorandum of February 26.)

at Yacolt during her contract term. Those situations have been disruptive to the conduct of postal business in Yacolt, and it was entirely reasonable for the contracting officer to inquire of Ms. Lattig as a prospective contractor what steps she would take to avoid the reoccurrence of similar circumstances. Her responses were judged inadequate, and we cannot conclude that that determination was either arbitrary or capricious.¹³

The protest is denied.

William J. Jones
Senior Counsel
Contract Protests and Policies

¹³ The other material cited by the protester in her behalf is not inconsistent with this conclusion. As noted, the official commendations she cites predate the time of the performance problems which lead to her default. That some customers have a favorable impression of Ms. Lattig does not negate the contrary opinions of others. Given her experiences in the post office and in the Yacolt community, the postmaster could properly rely on the customers' expressions of those opinions without delving deeply into their basis. Finally, although the protester contends that her termination resulted from the postmaster's animosity, "we need not make any findings in this regard because [she] has not shown any connection between the . . . conduct of the postmaster and [her] failure to perform according to the contract requirements." *Richard Lewis Dane I, supra.*